

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JOSHUA HUSOK,

Plaintiff,

v.

NP RED ROCK, LLC, d/b/a RED ROCK
CASINO, RESORT AND SPA, a Nevada
Limited Liability Company,

Defendant.

Case No. 2:20-cv-01939-KJD-DJA

ORDER

Presently before the Court is Defendant NP Red Rock LLC's Omnibus Motions in Limine (ECF No. 85). Plaintiff filed a response in opposition (ECF No. 89).

I. BACKGROUND

This action concerns Plaintiff's claim for retaliation pursuant to the Americans With Disabilities Act of 1990, as amended by the ADA Amendment Act of 2008, 42 U.S.C. § 12101 *et seq.* ("ADA") and Nevada Revised Statute § 613.330. Plaintiff asserts that Defendant terminated his employment in violation of the ADA and analogous provisions under state law.

In order to prevail at trial, Plaintiff must prove by a preponderance of the evidence that:

- (1) Plaintiff opposed what he reasonably believed to be an unlawful employment practice related to the hiring of a disabled person;
- (2) Defendant subjected him to an adverse employment action; and
- (3) Plaintiff was subjected to the adverse employment action because of his opposition to an unlawful employment practice.

Trent v. Valley Electric Ass'n, Inc., 41 F.3d 524, 526 (9th Cir. 1994).

Plaintiff has alleged the following. Plaintiff interviewed and conditionally offered a

1 disabled person, Zezy Farfan (“Farfan”), a Pool Porter position with Defendant Red Rock. The
 2 next day, Plaintiff was called into a meeting with his supervisor and company human resources
 3 personnel. At the meeting, he was asked questions about the thought process and decision making
 4 he used in hiring Farfan. There was discussion about company policy in the hiring phase. Plaintiff
 5 believed the director of human resources used disparaging language to refer to Farfan and disabled
 6 people generally. Further, Plaintiff believed the hiring process Defendant used did not comply with
 7 federal and state law regarding people with disabilities. Plaintiff stated these beliefs in the meeting.
 8 Subsequently, Plaintiff was placed on leave and eventually terminated.

9 Defendant now moves to exclude four areas of testimony from trial:

10 (1) evidence that Husok was offered severance and deemed eligible for rehire;

11 (2) evidence that Farfan has a pending action against Defendant;

12 (3) Jennifer Johnson’s deposition testimony that Farfan could perform the Pool Porter
 13 position which contradicted her prior statements and interrogatory answers; and

14 (4) testimony by Husok that his termination was unfair or without cause.

15 (ECF No. 85 at 1-6).

16 **II. STANDARD**

17 “The court must decide any preliminary question about whether ... evidence is admissible.”
 18 Fed. R. Evid. 104. Motions *in limine* are procedural mechanisms by which the court can make
 19 evidentiary rulings in advance of trial, often to preclude the use of unfairly prejudicial evidence
 20 before the jury. *United States v. Heller*, 551 F.3d 1108, 1111–12 (9th Cir. 2009). “Although the
 21 Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the practice has developed
 22 pursuant to the district court’s inherent authority to manage the course of trials.” *Luce v. United*
 23 *States*, 469 U.S. 38, 41 n.4 (1980). Judges have broad discretion when ruling on motions in limine.
 24 *See Trevino v. Gates*, 99 F.3d 911, 922 (9th Cir. 1999) (“The district court has considerable latitude
 25 in performing a Rule 403 balancing test and we will uphold its decision absent clear abuse of
 26 discretion.”).

27 Evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it
 28 would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed.

1 R. Evid. 401. Only relevant evidence is admissible. *See* Fed. R. Evid. 402. However, relevant
 2 evidence is inadmissible “if its probative value is substantially outweighed by a danger of . . .
 3 unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or
 4 needlessly presenting cumulative evidence.” Fed. R. Evid. 403.

5 **III. ANALYSIS**

6 **A. Evidence of severance and eligibility for rehire admissible if contemporaneous** 7 **with termination**

8 When he was fired in 2018, Husok was deemed eligible for rehire and was offered nominal
 9 severance pay in exchange for a release. Plaintiff seeks to exclude this evidence as unduly
 10 prejudicial by inviting the jury to decide the case on an improper basis. *See* Fed. R. Evid. 403.
 11 Generally, Federal Rule of Evidence (“Rule”) 408 prohibits evidence of offers of consideration to
 12 settle a claim to prove the validity of the claim. *See* Fed. R. Evid. 408(a)(1). However, the Ninth
 13 Circuit recognizes an exception where “an employment relationship is terminated and the
 14 employer offers a contemporaneous severance pay package in exchange for a release of all
 15 potential claims, including claims for discriminatory acts that may have occurred at or before the
 16 termination.” *Cassino v. Reichhold Chemicals, Inc.*, 817 F.2d 1338, 1342 (9th Cir. 1987).

17 Therefore, the Court denies Defendant’s motion to exclude evidence of the severance
 18 package and eligibility for rehire if the foundation for the testimony establishes that they were
 19 offered contemporaneously with Plaintiff’s termination and before he had asserted a claim for
 20 retaliation. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1291-92 (9th Cir. 2000) (settlement
 21 offer not made contemporaneously with termination and after plaintiff had asserted claim for
 22 discrimination excluded).

23 **B. Evidence that Farfan has a pending action against Red Rock may be** 24 **admissible**

25 Plaintiff seeks to bar evidence that Farfan has a pending action against Red Rock under
 26 Rule 403. However, the fact that Farfan’s claims against Red Rock are still pending may be
 27 necessary to rebut statements or insinuations by witnesses that Red Rock does not discriminate
 28 against disabled people or Farfan particularly. While Farfan’s claims are not to be resolved in this

1 action, evidence that her discrimination claims are still pending may be necessary so the jury is
 2 not enticed to find for Plaintiff or for Defendant based on their belief that she was or was not
 3 qualified for the Pool Porter position. The Court will consider a curative instruction addressing the
 4 issue of Farfan's pending litigation.

5 **C. Evidence of Johnson's Deposition Testimony is Relevant if she Testifies**

6 Defendant seeks to exclude statements made in Jennifer Johnson's deposition testimony
 7 that Farfan was able to perform the duties of the Pool Porter position which were contrary to other
 8 statements that she made on the same subject. To the extent that Johnson testifies, the statements
 9 that she made are relevant and admissible. The inconsistencies go to the weight of her testimony,
 10 a determination to be made by the jury. As such, Defendant's motion to exclude this evidence is
 11 denied.

12 **D. Husok will be allowed to fully testify about his termination**

13 Defendant seeks to limit Husok from arguing or testifying that his termination was "unfair"
 14 or "without cause or merit." (ECF No. 85 at 5). To the extent that Husok testifies regarding the
 15 reasons for his termination, unfair behavior or lack of cause and merit, is evidence that goes to the
 16 ultimate issue of whether or not Husok was terminated for opposing practices that he reasonably
 17 believed violated the law. The jury is capable of distinguishing that "unfair" treatment is different
 18 from illegal conduct. As such, the Court denies Defendant's motion to limit Husok's
 19 characterization of his termination.

20 **E. Objections may be renewed at trial based on foundation and testimony**

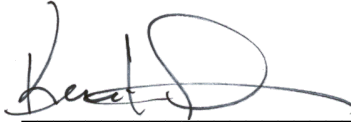
21 It is well settled that rulings on motions *in limine* are provisional. Any such "rulings are
 22 not binding on the trial judge [who] may always change his mind during the course of a trial."
 23 *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000); accord *Luce v. United States*, 469 U.S. 38,
 24 41 (1984). "Denial of a motion *in limine* does not necessarily mean that all evidence contemplated
 25 by the motion will be admitted to trial. Denial merely means that without the context of trial, the
 26 court is unable to determine whether the evidence in question should be excluded." *Ind. Ins. Co.*
 27 *v. Gen. Elec. Co.*, 326 F.Supp.2d at 846. Here, the Court will consider the relevance of testimony
 28 as foundation is adduced and facts presented. The parties may renew objections based on the

1 evidence and testimony actually presented during the course of trial.

2 **IV. CONCLUSION**

3 Accordingly, IT IS HEREBY ORDERED that Defendant NP Red Rock LLC's Omnibus
4 Motions in Limine (ECF No. 85) is **DENIED without prejudice.**

5 DATED: June 13, 2025

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8 Kent J. Dawson
9 United States District Judge
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